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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JANE ROCIO EVANS,

Plaintiff and Appellant,

v.

BONNIE DIANE WHYTE,

Defendant and Respondent.

A139312

(S.F. City & County Super. Ct.
No. CCH12573986)

Jane Rocio Evans, in propria persona, appeals from an order denying her request for a restraining order against Bonnie Diane Whyte with prejudice. Evans raises numerous issues concerning the court's denial of the order including that the court based its ruling on an ex parte communication with Whyte. We affirm.

I. FACTUAL BACKGROUND

Preliminarily, we note that Evans has not provided a properly supported statement of facts in her opening brief nor has she designated an adequate record. The California Rules of Court require that litigants provide a summary of the significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C), (2)(C); see *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 628 (*Cassidy*) [appellate court may disregard assertions and arguments that lack record references]; *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 [failure to comply with the Rules of Court requiring summary of material facts supported by appropriate references to the record may constitute waiver of error].) Evan's status as a pro. per. litigant does not excuse her from the duty to comply with the rules. An

appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

Here, Evans’s statement of facts is bereft of any citations to the record. In addition, she has attached numerous documents to her opening brief which were not before the trial court. It is well settled that an appellate court will not consider evidence that was not before the trial court nor will it address issues not raised below. “ ‘It has long been the general rule and understanding that “an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.” ’ ” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1239.) “ ‘Statements of alleged fact in the briefs on appeal which are not contained in the record and were never called to the attention of the trial court will be disregarded by this court on appeal.’ ” (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) Hence, we will not consider numerous documents included in Evans’s briefs or those attached to various motions she has filed that purport to chronicle facts that occurred subsequent to the court’s order. We confine our review to the proceedings which took place in the trial court. (*Cassidy, supra*, 220 Cal.App.4th at p. 628.)

Moreover, Evans appears to have incorporated only her view of the facts. This one-sided presentation of the evidence violates another established rule of appellate practice. An appellant must fairly set forth all of the significant facts, not just those beneficial to her. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Although Evans’s briefs fail to comply with the Rules of Court, we shall consider the merits of the appeal to the extent possible based on the briefs and the record before us.

So far as we can ascertain, the present litigation arose following Evans’s dissatisfaction with the probate of her late aunt’s estate in which Whyte, the aunt’s caregiver, received a bequest which was purportedly more than the one received by

Evans.¹ Questions regarding the estate and its distribution are not before us as the probate matter was filed in the Mercer County Surrogate's Court in Trenton, New Jersey.

On October 18, 2012, Evans filed a request for a temporary restraining order (TRO) against Whyte, who lives in Port Townsend, Washington. She alleged that Whyte was cyberstalking her, that she refused to return paintings that belonged to Evans and other family members, and that Whyte was harassing her by refusing to return the paintings. The court denied the request for a TRO pending a hearing.

On December 12, 2013, the court continued the matter based on counsel for Whyte's request. Whyte's counsel argued that Whyte lived in Washington and had just been served with the motion papers a few days previously. The court granted the continuance and urged Evans to try to resolve the matter. Evans insisted on a hearing. The court admonished her that the burden of proof at the hearing would be clear and convincing evidence.

The court held a hearing on Evans's request for a restraining order on January 23, 2013. Whyte did not appear, but had filed a motion to continue the matter because she was attempting to get documents from the estate matter that were referenced in Evans's motion papers. The court was inclined to grant the request, but Evans insisted that the hearing go forward. Evans argued that Whyte was cyberstalking her and sending e-mails stating that Evans "work[ed] from home naked." She also argued that Whyte unduly influenced Evans's late aunt. Evans also asserted that Whyte was committing fraud by acting as an executor to the will by moving, destroying, and stealing estate property. In addition, Evans related that she had filed several police reports in order to address Whyte's fraud and had been advised by the police to seek a restraining order. She further argued that she feared for her safety.

¹ The record reveals that on August 2, 2003, Evans received \$25,000 under her aunt's will and that she executed a release of all claims she may have had with regard to her aunt's estate.

The court denied the request for a restraining order with prejudice, stating that it had read all of the documents Evans had filed, and found no credible evidence to support her request.

II. DISCUSSION

Evans contends that the court abused its discretion in denying her request for a restraining order because it denied her request even though Whyte did not appear. She also argues that the court erred in considering an ex parte communication from Whyte in which she requested a continuance. She also makes several arguments about Whyte and her late aunt's estate.

Evans has failed to support any of her arguments with citations to relevant legal authority and her factual statements are devoid of any citations to the record. (See Cal. Rules of Court, rule, 8.204.) The brief is disorganized, repetitive, and largely incoherent. It is the appellant's burden on appeal to show both that the trial court committed error and that the error was prejudicial to the appellant. (*In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575.) “ ‘In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration.’ [Citation.]” (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.) Indeed, “failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal. . . . ‘ ‘Contentions supported neither by argument nor by citation of authority are deemed to be without foundation, and to have been abandoned.’ [Citations.]” [Citation.] Nor is an appellate court required to consider alleged error where the appellant merely complains of it without pertinent argument. [Citation.]’ ” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119–1120.)

Evans's failure to substantiate any of her claims with proper citations to the record and legal authority is fatal to her appeal. She has waived any challenges to the court's order. We nonetheless note that our review of the record supports the court's denial of Evans's request for a restraining order. In order to support the issuance of a restraining

order, Evans was required to show, by clear and convincing evidence, proof of harassment—“unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.” (Code of Civ. Pro., § 527.6, subd. (b)(3); *Schraer v. Berkeley Property Owners’ Assn.* (1989) 207 Cal.App.3d 719, 730.) Here, Evans failed to show proof of harassment. The court did not abuse its discretion in denying Evans’s request for a restraining order.

III. DISPOSITION

The order is affirmed.²

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.

² Good cause lacking, we deny Evans’s motion to strike respondent’s brief, her amended motion to strike respondent’s brief, her request to submit new exhibits, and her motion to strike Whyte’s motion to augment the record. We also deny Whyte’s motion to augment the record. (See *Cassidy, supra*, 220 Cal.App.4th at p. 628 [our review is confined to the proceedings in the trial court].)